Supreme Court, U.S.
FILED
JUL 27 2009
OFFICE OF THE CLERK

No. 08-1579

IN THE
Supreme Court of the United States

THE RECTOR, WARDENS AND VESTRYMEN OF ST. JAMES PARISH IN NEWPORT BEACH, CALIFORNIA, *et al.*,

Petitioners,

v.

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of California

BRIEF FOR *AMICI CURIAE* CHRIST CHURCH, FALLBROOK, CALIFORNIA, ET AL. IN SUPPORT OF PETITIONERS

(Additional Amici Listed on Inside Front Cover)

CHARLES W. MATHEIS, JR.
BEAM, BROBECK, WEST, BORGES & ROSA LLP
1301 Dove Street, Suite 700
Newport Beach, CA 92660-2412
(949) 208-8070

Attorneys for Amici Curiae Christ Church, Fallbrook, California, et al.

ST. LUKE'S OF THE MOUNTAINS ANGLICAN CHURCH, LA CRESCENTA, CALIFORNIA,

ST. ANNE'S ANGLICAN CHURCH, OCEANSIDE, CALIFORNIA,

ST. MICHAEL & ALL ANGELS EPISCOPAL CHURCH, LAKE CHARLES, LOUISIANA,

TRADITIONAL VALUES COALITION EDUCATION AND LEGAL INSTITUTE, ANAHEIM, CALIFORNIA

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 3

ARGUMENT 5

I. The Courts Should Eschew Inquiry Into Church Polity and Doctrine 5

1. First Amendment Hazards 5

2. Judicial Quagmire 6

3. The Courts Needn't Go There 7

II. Why The Court Should Grant Review 8

1. National Concern is Demonstrated 9

2. Church Property Litigation is Endemic ... 9

3. The States are in Conflict 10

4. Polity Categories No Longer Serve 12

CONCLUSION 12

TABLE OF AUTHORITIES

CASES **Page**

Jones v. Wolf, 443 U.S. 595 (1979) 7,8,10

Watson v. Jones, 80 U.S [13 Wall] 679 (1872) . 10,12

Episcopal Church Cases, 45 Cal. 4th 467 (2009) . 8,11

STATUTES

California *Corporations Code, section* 9142(c) . . . 8

ARTICLES

The New York Times, December 5, 2007 9

"(Religious rifts) have flooded the courts . . ."

United Methodist News Service, July 17, 2002 . . . 9

Ventura County Star, April 20, 2007 10

"A Small Church at Center of Big Debate"

OTHER AUTHORITY

Bishops' Statement on the Polity of the Episcopal Church http://www.anglicancommunioninstitute.com 2009/04/bishops-statement-on-the-polity-of-the-episcopal-church/ 6,7

Rectors' Declaration of Support for the Bishops' Statement on the Polity of the Episcopal Church . . 7

TABLE OF AUTHORITIES

Page

OTHER AUTHORITY (Cont'd)

http://www.anglicancommunioninstiute.com/
2009/05/cp rectors-declaration-of-support-
for-the-bishops-statement-on-the-polity
-of-the-episcopal-church/ 7

http://www.episcopalchurch.org/79901 107043
ENG HTM .htm 7

INTEREST OF AMICI CURIAE

Christ Church, Fallbrook, California, St. Luke's of the Mountains Anglican Church, La Crescenta, California, St. Anne's Anglican Church, Oceanside, California, St. Michael & All Angels Episcopal Church, Lake Charles, Louisiana, and Traditional Values Coalition Eduction And Legal Institute, Anaheim, California, submit this amicus curiae brief in support of the petition for writ of certiorari.[1]

Christ Church, St. Luke's of the Mountains Anglican Church, and St. Anne's are churches that have been sued by the Episcopal Church to wrest their property from them.

St. Michael & All Angels Episcopal Church joins in asserting that the Episcopal Church is not a hierarchal church but in fact is a voluntary association of equal dioceses without any hierarchal structure at the national level.

As churches we are also affected in our finances by the uncertainty in the law of church property ownership. Churches and synagogues in particular are funded by the voluntary donations of congregants, which oftentimes is sacrificial giving. Uncertainty in

---

[1] U.S. Supreme Court Rule 37.6: Amici Curiae disclose that (1) no counsel for a party to this dispute authored this brief in whole or in part, and (2) no person or entity other than Amici Curiae made a monetary contribution to the preparation or submission of this brief.

U.S. Supreme Court Rule 37.2(a): Petitioners and Respondents consented to the filing of this brief. Consent letters have been provided to the Clerk of this Court.

church property law chokes-off money for capital campaigns and casts doubt on the estate planning of those who cannot be sure of the ultimate beneficiary of their generosity.

Traditional Values Coalition is a public policy organization that speaks on behalf of over 43,000 churches, bridging racial and socio-economic barriers, and includes most Christian denominations across the United States. Traditional Values Coalition works regularly with members of the House and Senate and their staffs on a variety of issues of concern to churches.

SUMMARY OF ARGUMENT

I.

Courts should eschew inquiring into church polity and doctrine because:

1. The matter is fraught with First Amendment reefs and shoals, and the inquiry itself is entangling for the courts;

2. The quagmire of Protestant church doctrinal and polity issues is wasteful of judicial resources; and

3. It is not necessary for the courts to involve themselves in such issues.

II.

The Court should grant review because:

1. The *St. James Church* case[2] is of national interest;

2. Litigation of church property ownership has become endemic in America in this decade, with many Protestant denominations, religions and faith groups affected by this case;

3. The States are in conflict on whether they must defer to a church hierarchy or may use neutral principles of law to resolve church property issues; and

---

[2] *The Rector, Wardens and Vestrymen of St. James Parish in Newport Beach, California, et al., v. The Protestant Episcopal Church in the Diocese of Los Angeles, et al.*, 45 Cal. 4th 467 (2009)

4. The religious landscape has evolved in America to the point where churches no longer fit into the neat categories of "hierarchal" or "congregational."

ARGUMENT

1.

COURTS SHOULD ESCHEW INQUIRY INTO CHURCH POLITY AND DOCTRINE

This *amicus curiae* brief focuses on a single question: Should the courts be attempting to ascertain whether and to what extent a Protestant church is hierarchal?

We argue that the courts should not be so engaged because (1) the matter is fraught with First Amendment reefs and shoals, and the mere inquiry is entangling for the courts; (2) the quagmire of Protestant church doctrinal and polity issues wastes judicial resources, and (3) it isn't necessary for the courts to involve themselves in such issues.

1. FIRST AMENDMENT HAZZARDS. The courts should not be ascertaining church polity as doing so invites issues of an establishment of religion. Establishment can occur by accepting one litigant's position as over and against another's, as was done by the California court in this case [45 Cal.4th 467 (2009)][3], or by siding in contested issues of church polity; thereby in either case lending approval to one religious body in its controversy with another religious body.

---

[3] In giving a canon of the Episcopal Church dispositive weight the California court accepted the Episcopal Church's self-serving representation that it is purely a hierarchal church. The court ignored St. James Church's claim to the contrary. (No evidence existed as the case came before the court on pretrial motions.)

2. **JUDICIAL QUAGMIRE**. Whether, to what extent, and for what purposes, a particular Protestant religious body is "hierarchal" is not easily determined by a court.

The plethora of Protestant denominations in America present many doctrinal variations and church polity configurations.

Whether the Episcopal Church is hierarchal is hotly disputed within the Episcopal Church itself. In a recent example, the Episcopal Church's position that it is purely hierarchal is sharply disputed by fourteen Episcopal bishops who, on April 18, 2009, issued a *Statement on the Polity of the Episcopal Church*.[4]

These bishops claim their church isn't hierarchal at all but is a *voluntary confederation* of local dioceses that may disassociate at will. The *Statement* contends that authority exists only at the diocesan level, based on the structure of the church as "that of a voluntary association of equal dioceses." They note that the Constitution and Canons of the Episcopal Church make no provision either for a central hierarchy or for a Presiding Bishop (archbishop) with authority over bishops.

Further, the bishops note, the General Convention of the church is a body whose voting members are drawn from diocesan deputations. Nor, say these bishops, do the bishops, priests or deacons

---

[4] *Bishops' Statement on the Polity of the Episcopal Church* (15 pages) is available online at: http://www.anglicancommunion institute.com/2009/04/bishops-statement-on-the-polity-of-the-episcopal-church.

(the ordained clergy) acknowledge or submit to any central hierarchal authority or archbishop. The bishops' position is supported in a declaration signed by the rectors (head pastors) of fifty-six Episcopal Churches.[5] (Delegates to the Convention of the Diocese of Albany of the Episcopal Church meeting June 5-7, 2009 overwhelmingly passed a resolution supporting the Bishop's Statement.)

A large body of work by canon lawyers, theologians, and church historians, rooted in historicity stretching back to the Colonial period, undergirds the bishops' position (if not contrary views).

Apologists for the Episcopal Church would have it otherwise, of course, and their own views are aptly stated, too.[6]

3. THE COURTS NEEDN'T GO THERE. *Jones v. Wolf*, 443 U.S. 595 (1979), pointed the way by approving neutral principles of law as the means of avoiding these kinds of problems. The courts can and should refrain from inquiry into church polity and doctrinal matters by employing a purely neutral principles of law doctrine, treating church property disputes the same as other property disputes. This is

---

[5] *Rectors' Declaration of Support for the Bishops' Statement on the Polity of the Episcopal Church*, (6 pages) is available at http://www.anglicancommunioninstiute.com/2009/05/cprectors-declaration-of-support-for-the-bishops-statement-on-the-polity-of-the-episcopal-church.

[6] For example, see http://www.episcopalchurch.org/79901_107043_ENG_HTM.htm where a number of attacks on the *Bishop's Statement* are collected.

the wisdom of the *Jones* court, and it should be clarified by this Court as the standard for deciding church property cases.

II.

THE COURT SHOULD GRANT REVIEW

The California Supreme Court impermissibly decided a matter of religious doctrine and polity by determining that the Episcopal Church is hierarchal and therefore entitled to an exemption from the application of California law not accorded non-hierarchal churches.

Specifically, the California decision lets a hierarchal church grab the land and buildings of a local congregation by unilaterally declaring that such property is "held in trust."[7]

The Court should grant *certiorari* because (1) the *St. James Church* case is of national interest; (2) litigation over church property has become endemic in this decade, with many Protestant denominations affected by this case; (3) States are in conflict on whether they must defer to a church hierarchy or may utilize neutral principles of law to resolve church property issues, and (4) the religious landscape in America has evolved to the point where churches no longer fit into the neat categories of "hierarchal" or "congregational."

---

[7] This was accomplished by interpreting California *Corporations Code* section 9142(c), as giving preference to "hierarchal" churches. *Episcopal Church Cases*, 45 Cal. 4th at 485-493.

1. THE NATIONAL INTEREST IS DEMONSTRATED. The *St. James Church* case has attracted national, indeed international, interest evidenced by a multiplicity of stories about it in the print media, including, for example, *The New York Times* (5 articles), *Newsday, The Los Angeles Times* (31 articles), *The Washington Post, and The Christian Science Monitor*, and a plethora of other newspapers, magazines and wire services, including *Associated Press*, *City News Service*, and *Religious News Service*.

Electronic media coverage has included national reporting by *CNN*, *The McNeil/Lehrer News Hour, Fox News National with Shepard Smith,* and the *British Broadcasting System (BBC)*, as well as thoughtful stories and chatter on countless radio hookups, such as *Fox News* and *Focus on the Family*, and websites and blogs, including the *Wall Street Journal Law Blog*.

2. CHURCH PROPERTY LITIGATION IS ENDEMIC. Litigation of church property ownership has become endemic in this decade, as documented by sources as disparate as *The New York Times* and the *United Methodist Press Service*.[8]

---

[8] "(Religious rifts) have flooded the courts with civil lawsuits over church property, an area of jurisprudence where courts, as they try to navigate First Amendment separation of church and state, are notoriously uncomfortable." *The New York Times*, December 5, 2007.

"The United Methodist Church has guidelines for handling disputes over church property, but that doesn't stop some cases from landing in civil courts." *United Methodist News Service*, July 17, 2002.

Without conducting an exhaustive analysis we know that the Episcopal Church has now brought no fewer than fifty-five lawsuits seeking to wrest church property from local congregations, and that the Presbyterian Church has likewise brought dozens of such cases. Other church parent bodies have brought other such cases; for example, the Russian Orthodox Church which is suing a tiny California congregation for its church building.[9]

3. THE STATES ARE IN CONFLICT. Justice Powell was prescient in his dissenting opinion in *Jones v. Wolf.* "(N)ot only questions of state law but also important questions of federal constitutional law . . . are left to the state courts for their decision . . . and they will travel a course left totally uncharted by this Court." *Jones*, 443 U.S. at 616.

The result is a perfusion of contradictory and often very confusing authority, as States have grappled with *Jones v. Wolf,* earlier authority such as *Watson v. Jones,* 80 U.S. [13 Wall] 679 (1872), and other cases.

Some States believe they are unfettered in following neutral principles of law, either because it is constitutionally mandated or permissible and preferable. These would appear to include Alabama, Alaska, Arkansas, Colorado, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New York, Pennsylvania, South Dakota and Tennessee.

---

[9] *Ventura County Star*.com, April 20, 2007, "A Small Church at Center of Big Debate."

At or near the other bookend, some States consider themselves either constitutionally bound to defer to church hierarchy or else they prefer to do so. These appear to include Florida, Iowa, Michigan, New Jersey, Nevada, North Carolina, Oklahoma, Texas, Washington and West Virginia.

Then there are the "mixed-results" States falling within the sprawl of authority. These include Connecticut, Pennsylvania and Wisconsin.

The variety of decisions involving just the application of neutral principles of law is quite amazing. For example, Arkansas and New Hampshire have based decisions on whether church canons must be considered in neutral principles, and whether that means preexisting canons or canons imposed after the property was acquired.

California has now plunged the neutral principles of law approach further into confusion by purporting to apply neutral principles while actually deferring to a self-proclaimed hierarchal church. As noted in her "concurring and dissenting opinion" California Justice Kennard declared that this was not the application of neutral principles of law at all but an entirely different breed of cat: "*the principle of Government approach*," which she thought permissible under the First Amendment. At issue was California's interpretation of legislative *fiat* to permit the creation of a trust interest by a non-owner of the trust corpus.[10]

---

[10] "Dissenting and Concurring Opinion" by Kennard, J., *Episcopal Church Cases*, 45 Cal.4th at 495-496.

The whirlpool of conflicting State authority has resulted from disagreements about the requirements of the Constitution that only this Court can resolve.

4. POLITY CATEGORIES NO LONGER SERVE. The deference to hierarchy approach is rooted in *Watson v. Jones*, decided at another time in America's religious history. Today there are thousands of diverse churches, religions and faith groups. Few are as rigidly hierarchal as the Roman Catholic Church or as plainly congregational as the Congregational Churches of a hundred forty years ago. Thus, except for strictly hierarchal churches like the Roman Catholic Church and the Church of Jesus Christ of Latter Day Saints, church property law is unpredictable for America's churches, religions and faith groups.[11]

CONCLUSION

We respectfully offer that it is needful and very timely for this Court to quell the confusion and to settle the disarray of authority among the various States concerning ownership of religious property.

This case presents the opportunity to establish neutral principles of law as the standard for determining issues of religious property ownership.

---

[11] Occupying one end of the spectrum, the Roman Catholic Church seems to do it right: it owns lands and buildings and assumes the concomitant responsibilities. However, the Episcopal Church and others including the Presbyterian Church want it both ways: pushing the purchase and all of the responsibilities and *liabilities* of property ownership off onto the local congregation, then claiming ownership for themselves.

For the above-stated reasons the Court should accept this case for review.

Respectfully submitted,

CHARLES W. MATHEIS, JR.
BEAM, BROBECK, WEST, BORGES & ROSA LLP
600 West Santa Ana Boulevard, Suite 1000
Santa Ana, California 92701-4586
Telephone:(714) 558-3944
Facsimile:(714) 568-0129
E-Mail: cmatheis@bbwbrlawfirm.com

July 27, 2009